



Comptroller General  
of the United States

4061411

Washington, D.C. 20548

## Decision

**Matter of:** Deborah Bass Associates

**File:** B-257958

**Date:** November 9, 1994

Deborah Bass for the protester,  
Terrence J. Tychan, Department of Health and Human Services,  
for the agency.  
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

1. Protest against agency decision to reject proposal is denied where record shows that agency reasonably evaluated protester's proposal in accordance with the evaluation criteria set forth in the solicitation.
2. Contracting agency's decision not to hold discussions or request best and final offers under solicitation issued pursuant to Small Business Innovation Research (SBIR) Program is unobjectionable since the Small Business Administration--the agency charged with implementing the SBIR Program--recognizes broad discretion of procuring agencies to promote small business participation in the program by streamlining procurement procedures, simplifying the operation of their SBIR Programs, and minimizing the regulatory and administrative burdens on offerors; and the procuring agency's decision constitutes a reasonable exercise of that discretion.

### DECISION

Deborah Bass Associates (DBA) protests the award of a contract to Technical Assistance and Training Corporation (TATC) under solicitation No. ACF-94-1, issued by the Department of Health and Human Services (HHS) for research into several topics, including Topic ACYF 94-02, to design strategies to improve relationships between state and county child protective services (CPS) officials and the news media. The protester contends that the agency's evaluation of DBA's proposal was flawed and that the agency improperly failed to conduct discussions with DBA.

We deny the protest.

The solicitation was issued under the Small Business Innovation Research (SBIR) Program. The SBIR Program was established under the Small Business Innovation Development Act (Innovation Act), 15 U.S.C. § 638 (1988 and Supp. V 1993), which requires federal agencies to reserve a portion of their research efforts in order to award "funding agreements," in the form of contracts, grants, or cooperative agreements, to small businesses based upon the evaluation of proposals submitted in response to solicitations issued pursuant to the Innovation Act.

Under Topic ACYF 94-02, the solicitation requested proposals for phase I of a two-phase project for the research and development of materials to assist representatives of state and county CPS agencies build better relationships with their local media. In preparing proposals, offerors were required to follow a specific format outlined in the solicitation. The outline consisted of 10 main elements under which offerors were to discuss various topics related to the proposed research. The solicitation explained that 9 of the 10 main elements would be divided into 4 groups and each group would be rated under the evaluation criteria listed in the solicitation, as follows: soundness and technical merit of the proposed research (35 points); qualifications of proposed principal investigator/project director, supporting staff, and consultants (30 points); potential of the proposed research for technological innovation and commercialization (25 points); and adequacy and suitability of the facilities and research environment (10 points). The tenth element would be considered but not numerically rated; costs would be evaluated for realism.

Technical proposals were to be evaluated by a panel of experts selected for their competence in their fields. The panel would evaluate proposals for technical merit; provide ratings in accordance with the evaluation criteria announced in the solicitation; make specific recommendations related to the scope, direction, and/or conduct of the proposed research; and recommend the award of a contract to the offeror whose proposal demonstrated the most promising technical and scientific approach. The solicitation contemplated the award of a fixed-price, 6-month contract.

Of the 250 firms solicited, 11, including the protester and the awardee, submitted proposals addressing Topic ACYF 94-02. The panel evaluated proposals by assigning numerical scores under each of the four evaluation criteria announced in the solicitation and calculating a total average score for each proposal. Final average scores ranged from 12.25 to 89.75 points (out of a maximum possible score of 100 points); DBA's proposal earned 84 points, while TATC's proposal earned the highest score of 89.75 points. DBA's total price was \$99,849; TATC's price was \$99,961. Based on

these results, the evaluation panel unanimously recommended award to TATC without conducting discussions with any offeror. Agreeing with that recommendation, the agency awarded a contract to TATC on June 23, 1994. Following a debriefing by HHS, DBA filed this protest in our Office.

Since agencies have broad discretion to determine which proposals will be funded under the SBIR Program, our review in these cases is limited to determining whether the agency violated any applicable regulations or solicitation provisions and whether the agency acted fraudulently or in bad faith. Noise Cancellation Technologies, Inc., B-246476; B-246476.2, Mar. 9, 1992, 92-1 CPD ¶ 269. Here, the protester does not allege that the agency acted fraudulently or in bad faith. Rather, DBA argues that its proposal should have received a higher rating because the agency failed to properly apply the evaluation criteria, and that the agency should have held discussions before making a final selection.

#### Evaluation of DBA's Proposal

The solicitation contemplated that at the completion of phase I, the contractor would deliver a product consisting of a comprehensive training and technical assistance package, including materials and models, targeted at state or county CPS directors and their staff. The solicitation specifically required that the deliverables have the effect of promoting dialogue at the local, state, and county levels between CPS officials and the local media, to "educate one another and open lines of communications," and that operational models be transferable to address different state and county situations.

DBA did not propose to deliver the contemplated product at the completion of phase I. Rather, during phase I of the project DBA proposed to only "gather information to recommend content and format for comprehensive training and technical assistance products that will be produced in phase II" of the project. DBA also represented in its proposal that a final report at the completion of phase I would include "options." The evaluation panel concluded that DBA apparently considered the deliverable products required at the completion of phase I to consist of "options," with actual delivery to be at a later time. The evaluators concluded that DBA either had misunderstood the requirements and goals of phase I, or that the firm could not deliver the required product within the contract period.

In addition, the panel found that DBA's research design was inconsistent with the goals of the project because it did not include a close working relationship with state and local CPS officials. In view of the solicitation

requirements, we believe that the evaluators reasonably downgraded DBA's proposal under the most important evaluation criterion, soundness and technical merit of the proposed research (worth a total of 35 points), awarding the protester's proposal an average score of 28.5 points under that criterion.

The evaluation panel also found DBA's marketing experience--an area related to the firm's ability to distribute critical information to the targeted CPS populations--weak, and found that DBA had no firm commitment from one of several consultants DBA proposed to work on the project. These weaknesses reasonably led the panel to downgrade DBA's score under "qualifications of proposed principal investigator/project director, supporting staff, and consultants" (worth a maximum of 30 points). DBA's proposal earned an average score of 28.5 points in this area.

While the protester disagrees with the evaluators' conclusions regarding its proposal and asserts that its proposal should have received a higher score, DBA has not provided any basis to establish that its proposal evaluation was unreasonable or inconsistent with the solicitation's evaluation criteria.

#### Discussions

DBA argues that since there were fewer than six technical points separating its proposal and the awardee's, the agency should have established a competitive range; conducted discussions with offerors whose proposals were included within the competitive range; and requested best and final offers (BAFO), before making a final selection decision. We disagree.

The protester incorrectly assumes that the closeness in final scores indicates that the agency considered DBA's proposal essentially equal to the awardee's proposal. When technical proposals are point-scored, the closeness of the scores does not necessarily indicate that the proposals are essentially equal. See Training and Management Resources, Inc., B-220965, Mar. 12, 1986, 86-1 CPD ¶ 244; Moorman's Travel Serv., Inc.--Recon., B-219728.2, Dec. 10, 1985, 85-2 CPD ¶ 643 (proposals were not considered equal despite difference of only .5 points on a 100-point scale). In other words, we do not rely on a mechanistic view of the numbers themselves. See JJH, Inc., B-247535.2, Sept. 17, 1992, 92-2 CPD ¶ 185. Rather, point scores are only guides to intelligent decision-making by source selection officials. What matters is the actual significance of the scores, i.e., the actual differences between the proposals. The significance of the difference in the technical merit of proposals is essentially a matter for the judgment of the

agency evaluators to which we will object only if it is without reasonable basis. See Systran Corp., B-228562; B-228562.2, Feb. 29, 1988, 88-1 CPD ¶ 206.

Here, the record shows that the evaluation panel considered the weaknesses in DBA's proposal rendered its research design inferior to the awardee's. In exercising its technical judgment, the evaluation panel concluded that because of these weaknesses, the protester's approach had less potential and offered lower expectation of promising results than the awardee's proposal. As a result, the panel unanimously concluded that DBA's proposed research was not worth funding. Notwithstanding the closeness of final average scores, the record establishes that the evaluation panel reasonably found DBA's proposal inferior to the awardee's.

DBA also contends that the agency was required to establish a competitive range, hold discussions, and request BAFOs. In 1982, Congress enacted the Innovation Act, amending the Small Business Act, to stimulate technological innovation by encouraging increased participation of small businesses in federal research and development efforts. 15 U.S.C. § 638. Recognizing that promoting participation of small business concerns in federal research and development programs would require a unique program especially designed to accommodate the particular needs of highly qualified, small businesses, Congress required that

"[t]he Small Business Administration, after consultation with the Administrator of the Office of Federal Procurement Policy, the Director of the Office of Science and Technology Policy, and the Intergovernmental Affairs Division of the Office of Management and Budget, shall . . . issue policy directives for the general conduct of the SBIR programs within the [f]ederal [g]overnment, including providing for--

"(1) simplified, standardized, and timely SBIR solicitations;

(4) minimizing [the] regulatory burden associated with participation in the SBIR program for the small business concern which will stimulate the cost-effective conduct of [f]ederal research and development and the likelihood of commercialization of the results of research and development conducted under the SBIR program . . . ." (15 U.S.C. § 638(j)).

Under this mandate, the Small Business Administration (SBA) issued a policy directive which provides guidance to participating agencies for conducting their respective SBIR Programs.<sup>1</sup> As explained in that directive, SBA interprets the statutory requirements concerning the SBIR Program as being aimed at assisting small business concerns by establishing a uniform, simplified process for the operation of SBIR Programs, while allowing participating agencies flexibility in the content and operation of their individual SBIR Programs.<sup>2</sup>

One of the main objectives of SBA's policy directive is to "simplify and standardize application of existing regulations related to the program." SBA states in the directive that "[t]he explicit nature of the SBIR legislation concerning certain recognized acquisition procedures provides a strong base of authority for streamlining the process for obtaining [research and development] from small highly innovative business concerns." While the directive encourages agencies to use a standard review process in evaluating and selecting proposals to be funded through the Program, the directive also allows agencies to use simplified procedures, and invites them to minimize the regulatory and administrative burdens of participating in the SBIR Program. SBA thus recognizes broad discretion in agencies in operating their SBIR Programs, with a view towards making participation by small business concerns a streamlined, economically feasible process.

We think that the agency's decision here to not establish a competitive range or conduct discussions before selecting TATC's proposal for funding constitutes a reasonable exercise of that discretion. In view of SBA's encouragement to use simplified evaluation and selection procedures, and to minimize the administrative and regulatory burdens of


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<sup>1</sup>U.S. Small Business Administration, Office of Innovation Research and Technology, Policy Directive, Small Business Innovation Research (SBIR) Program (1993).

<sup>2</sup>Since SBA is charged with effectuating the congressional policies expressed in the Small Business Act, its interpretation and implementation of that law, including the amendments resulting from the Innovation Act, are accorded significant weight. See CADCOM, Inc., 57 Comp. Gen. 290 (1978), 78-1 CPD ¶ 137. Accordingly, SBA's SBIR Program policy directive carries significant weight with respect to the governance of SBIR Programs. See Department of Health & Human Servs. payment of profits to small businesses awarded grants under the Small Business Innovation Development Act, 71 Comp. Gen. 310 (1992).

participating in the SBIR Program, HHS reasonably considered that because of the significant differences between DPA's and TATC's proposed approaches, establishing a competitive range, holding discussions, and requesting BAFOs was not necessary.<sup>1</sup> In our view, to accept DBA's argument that agencies are required, in every case where they seek proposals under the SBIR Program, to convene a panel of experts to evaluate the merits of proposed research designs and technical solutions; establish a competitive range; conduct discussions; request BAFOs; and reevaluate proposals based on BAFOs in order to select a research project worth funding would impose administrative and regulatory burdens on participating agencies and small businesses that are inconsistent with the stated goals and objectives of the SBIR Program.<sup>4</sup>

The protest is denied.

  
 For Robert P. Murphy  
 Acting General Counsel

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<sup>1</sup>Although the panel recommended that before awarding a contract, the agency should discuss certain points in TATC's proposal, the agency reports that it did not hold such discussions with TATC, or with any other offeror.

<sup>4</sup>SBA agrees with our conclusion. Specifically, SBA agrees that the SBIR Program policy directive does not require agencies to conduct discussions prior to selecting a proposal under the Program, and has informed us that to require agencies to conduct discussions in these cases would "probably exceed [SBA's] authority" under the statutes authorizing the Program.